

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY  D.C.

05 SEP 13 PM 1:26

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
WD OF TENNESSEE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 04-2902 MP

One 2002 Chevrolet Avalanche,
VIN 3GNEK13T62G131404, with
All Appurtenances and
Attachments Thereon,

Thirty Nine Thousand Dollars
(\$39,000.00) In United States
Currency,

Defendants.

ORDER DENYING CLAIMANT'S MOTION TO COMPEL

Before the court is claimant the Estate of Gary Don Nance's motion to compel, filed August 29, 2005 (dkt #29). Plaintiff United States of America ("the Government") filed its response in opposition on September 8, 2005. For the following reasons, the motion is DENIED.

In the motion, claimant asks the court to compel discovery of (1) tape recordings evidencing an undercover sale of cocaine to Nance and (2) a sample of the cocaine for independent testing. Fed. R. Civ. P. 37(a)(2)(A) requires a party filing a motion to compel discovery to "include a certification that the movant has in

good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action." See also Local Rule 7.2(a)(1)(B) (authorizing court to deny motion for failure to file a certificate of consultation). No such certification was attached to claimant's motion. In its response, the Government indicates that it received no attempt by counsel for claimant to discuss the present motion. As claimant has failed to comply with the consultation requirement, the motion is DENIED.

Furthermore, claimant's motion is moot. In its response, the Government points out that the "cocaine" used during the undercover sale to Nance was sham cocaine. It is, therefore, unnecessary for claimant to perform independent testing on the validity of the "cocaine." The Government further declares that the requested tapes have since been provided to claimant. Consequently, the court considers the motion moot with respect to both items.

For the above reasons, the Claimant's motion is DENIED.

IT IS SO ORDERED.



TU M. PHAM
United States Magistrate Judge

September 13, 2005
Date



Notice of Distribution

This notice confirms a copy of the document docketed as number 32 in case 2:04-CV-02902 was distributed by fax, mail, or direct printing on September 13, 2005 to the parties listed.

Timothy A. Langford
LAW OFFICES OF TIMOTHY A. LANGFORD
P.O. Box 167
Hickman, KY 42050

Christopher E. Cotten
U.S. ATTORNEY'S OFFICE
167 N. Main St.
Ste. 800
Memphis, TN 38103

Blair Beavers Evans
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ
165 Madison Ave.
Ste. 2000
Memphis, TN 38103

Timothy C. Naifeh
LAW OFFICES OF TIMOTHY C. NAIFEH
227 Church St.
Tiptonville, TN 38079

Honorable Jon McCalla
US DISTRICT COURT